Office-Supreme Court, U.S.
FILED
JAN 25 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 947

TEN INDIVIDUAL DEFENDANTS, NET LIMITED, INC. and SPECIAL INVESTMENTS, INC., *Petitioners*

v.

INDIAN LAKE ESTATES, INC., *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

J. H. KRUG
839-17th Street, N. W.
Washington, D. C. 20006
Counsel for Petitioners, Ten Individual Defendants and Net Limited, Inc.

ALBERT PHILIPSON
Brawner Building
Washington, D. C. 20006
Counsel for Petitioner, Special Investments, Inc.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTES INVOLVED	3
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	8
1. The holding that Judge Pine's order of March 24, 1964 was appealable although it lacked a Rule 54(b) determination conflicts with decisions of this Court, especially Sears, Roebuck & Co. v. Mackey	8
2. In holding that a sham "amendment"—a carbon copy of the dismissed pleading—rendered the dismissal order unappealable, the Court of Appeals ruling is inconsistent with decisions of this Court, and of other Courts of Appeal	11
3. The Court of Appeals holding that under the 1963 amendment corporations barred from pleading "statutes against usury" are nevertheless free to plead the Loan Shark Law is of importance to the financial community not only in the District of Columbia, but in many states where similar statutes exist	14
APPENDIX A	1a
APPENDIX B	14a
APPENDIX C	16a
APPENDIX D	18a

CITATIONS

CASES: Page

Bush v. *United Benefit Fire Ins. Co.*, 311 F. 2d 893 (5th Cir.) 9
Byrne v. *Kysar*, 347 F. 2d 734 (7th Cir.) 12, 13
Cleary Bros. v. *Christie Scow Corp.*, 176 F. 2d 370 (2d Cir.) 13
Courembis v. *Independence Avenue Drug Fair, Inc.*, 115 U.S. App. D.C. 7, 316 F. 2d 658 9
Dickinson v. *Petroleum Conversion Corporation*, 338 U.S. 507 9
Due v. *Tallahassee Theatres, Inc.*, 333 F. 2d 630 (5th Cir.) 13
Foman v. *Davis*, 371 U.S. 178 .....11, 13
Hartman v. *Lubar*, 77 U.S. App. D.C. 95, 133 F. 2d 44 (1942) 15
Jung v. *K. & D. Mining Co., Inc.*, 356 U.S. 335 13
Kinsley v. *Markovic*, 333 F. 2d 684 (4th Cir.) 12, 13
Marotta v. *Milestone*, 114 U.S. App. D.C. 237 (314 F. 2d 242 10
Orme v. *Lendahand Co., Inc.*, 76 U.S. App. D.C. 49, 128 F. 2d 756 14
Randolph v. *Randolph*, 91 U.S. App. D.C. 170, 198 F. 2d 956 11
Scholl v. *District of Columbia*, 118 U.S. App. D.C. 98, 331 F. 2d 1018 12
Sears, Roebuck & Co. v. *Mackey*, 351 U.S. 427 .....9, 10, 11
Unemployment Compensation Commission v. *Aragon*, 329 U.S. 143 16
Unitde States v. *The Three Friends*, 166 U.S. 1 13
Walter W. Johnson Company v. *R.F.C.*, 223 F. 2d 101 (9th Cir.) 9

STATUTES AND RULES:

Federal Rules of Civil Procedure

Rule 54(b) 2, 3, 5, 7, 8, 9, 10, 11, 12
Rule 73(a) 11

Public Law 88-111 .....3, 8, 14, 15

D. C. Code Page

Section 29-904(h) 4
Section 29-933a 4, 5
Section 28-2703 ..... 3, 14
Section 26-601 ..... 3, 8, 14, 15
Section 26-605 14

MISCELLANEOUS:

Comment, 23 Md. L. Rev. (1963) 51 15
Curran, *Trends in Consumer Credit Legislation* (1965) 15
Gallert, et al., *Small Loan Legislation* (1932) 14
Hubachek, *The Drift Toward a Consumer Credit Code*, 16 U. Chi. L. Rev. (1949) 4 16
Hubachek, *Progress and Problems in Regulation of Consumer Credit*, 19 Law and Contemp. Prob. (1954) 609 14
"The Loan Shark Problem Today," 19 Law. and Contemp. Prob. No. 1 (Winter issue 1954) 14
Moore's Federal Practice (2d ed.) § 58.05[2] 11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No.

TEN INDIVIDUAL DEFENDANTS, NET LIMITED, INC. and SPECIAL INVESTMENTS, INC., *Petitioners*

v.

INDIAN LAKE ESTATES, INC., *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above-entitled case on October 7, 1965.

OPINIONS BELOW

The orders of the District Court (Appendix B, *infra*) are not reported. The opinion of the Court of Appeals (Appendix A, *infra*) is not reported. The orders of the Court of Appeals denying rehearing (Appendix C, *infra*) are not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on August 4, 1965 (R. 119). Rehearing was denied on October 7, 1965 (R. 135, 136). On December 29, 1965, by order of Mr. Justice Clark, the time within which to file a petition for certiorari was extended to January 25, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

The effect of orders by Judge McGarraghy on December 3 and 19, 1963, was that the amended complaint would stand dismissed on January 2, 1964 unless respondent amended by that date. A Rule 54(b) determination was incorporated. On January 2, respondent filed a purported "second amended complaint" which consisted of a verbatim copy of the amended complaint plus one item—respondent's withdrawal from the District of Columbia—which respondent had already presented to Judge McGarraghy and on which he had ruled adversely to respondent. Petitioners were forced to file a new motion to dismiss. On March 24, Judge Pine granted the motion, stating that "all relevant issues" had been raised and argued before Judge McGarraghy. Although the case involved multiple claims, respondent did not seek to obtain a Rule 54(b) determination, but nevertheless appealed from Judge Pine's order. The Court of Appeals held: 1) respondent had "amended" and therefore was not required to appeal from the order of December 3 as modified December 19 in order to protect its rights; 2) Judge Pine's order of March 24, 1964 was "final and appealable"; 3) the statute barring the pleading of "statutes against usury" embraced

general usury statutes but not D. C. Code §§ 26-601 to 611, the Loan Shark Law, because the latter was a "licensing statute" (although it regulated the rate of interest).

The questions presented are:

(1) Whether the appeal should have been dismissed because the order of March 24, 1964 did not contain a Rule 54(b) determination.

(2) Whether the appeal should have been dismissed as untimely because respondent failed to appeal from Judge McGarraghy's order of December 3, 1963 as modified December 19.

(3) Whether the statute barring a corporation from pleading "statutes against usury" is confined to general usury statutes and leaves a corporation free to plead small loan statutes such as the Loan Shark Law, which provides for licensing and other means of regulating interest rates.

STATUTES INVOLVED

Rules 54(b) and 73(a), Fed. R. Civ. Proc., Public Law 88-111, and Sections 29-904(h), 29-933a, 28-2703, 26-601 and 26-605 of the District of Columbia Code (1961) are set forth in Appendix D, *infra.*

STATEMENT OF THE CASE

The amended complaint filed in February 1963 alleged violation of certain statutes regulating the rate of interest—D.C. Code (1961) § 28-2703, the general usury statute; D.C. Code §§ 26-601 *et seq.*, known as the Loan Shark Law; and a Florida usury statute (R. 1, 14).

In September 1963 petitioners moved to dismiss the action because Public Law 88-111 approved September

3, 1963 barred corporations from pleading "any statutes against usury in any action" (R. 33). This amendment to Section 4(h) of the District of Columbia Business Corporation Act, D.C. Code § 29-904(h), applied in terms only to a "corporation formed hereunder," i.e., to a domestic corporation. But, as defendants-petitioners showed, Congress did not discriminate against domestic corporations by permitting a foreign corporation, such as respondent, to plead "statutes against usury" in the District of Columbia courts. D.C. Code § 29-933a provides (Appendix D) that a foreign corporation

> "shall be subject to the same . . . restrictions . . . imposed upon a domestic corporation of like character."

Petitioners' motion to dismiss was fully briefed and argued (R. 34-60), and at the close of the argument on November 27, 1963 Judge McGarraghy ruled that he would grant the motion because "the action in this case is barred by the statute . . ." (R. 60) At respondent's request, however, the order of December 3, 1963 dismissing the amended complaint gave respondent leave to amend within twenty days (App. B). Respondent later requested a 10-day extension of this 20-day period, so that at the end of thirty days it could either amend or file an appeal. Petitioners acquiesced and on December 19, 1963 Judge McGarraghy entered a consent order which recited:

> ". . . that plaintiff desires an additional period to January 2, 1964 within which either to further amend or to appeal . . ." (App. B)

The December 19 order extended to January 2, 1964 the time within which to amend, and provided that no

further extension of time for leave to amend would be granted. Petitioners placed a Rule 54(b) determination in the form of order presented to Judge McGarraghy, which was entered on December 19, in order to permit respondent to appeal promptly, despite the multiple claims and parties involved (R. 61). Petitioners had filed counterclaims; also additional parties had been brought in and various cross-claims were pending (R. 26, 32; docket entries in District Court dated April 11, 1963, May 1, 1963, May 4, 1963, October 11, 1963 and October 28, 1963).

On January 2, 1964 respondent purported to exercise its leave to amend, by filing a so-called second amended complaint (R. 62). In actual fact, this was no amendment. It was a verbatim copy of the amended complaint which had been ordered dismissed, except for one item. It alleged that respondent was authorized to do business in the District of Columbia until it was issued a certificate of withdrawal in June 1960 (par. 2). However, this purported new material was not new; it had been fully presented to Judge McGarraghy. Prior to the argument on the motion to dismiss, respondent had submitted a certified copy of the certificate of withdrawal, and in its memorandum and in argument respondent contended that the withdrawal relieved it from the statutory bar against pleading statutes against usury which applied to domestic corporations (R. 39, 41, 57-58). In the opinion of August 4, 1965, the Court below took note of this. Appendix A, footnote 7. Petitioners, both in a supplemental memorandum and in oral argument, urged that the withdrawal was immaterial, because the statute provided that a foreign corporation after withdrawal from the District would be "subject to the same . . .

restrictions . . . now or hereafter imposed upon a domestic corporation of like character." (R. 44, 48) Judge McGarraghy clearly agreed with petitioners on this issue, for otherwise he would not have granted the motion to dismiss. Indeed, the Court of Appeals in Part II of its opinion expressly ruled against respondent on this point, for the same reason advanced by petitioners before Judge McGarraghy. (Appendix A, p. 10; R. 44, 48).

The purported amendment, therefore, was no amendment, for it merely re-alleged what Judge McGarraghy had already ruled to be insufficient.

Petitioners' desire to facilitate a prompt appeal, in order to have appellate review of Judge McGarraghy's interpretation of the statute (R. 52), was thus frustrated. A new pleading was on file, the purported second amended complaint, and petitioners were forced to file another motion to dismiss in order to dispose of that pleading (R. 76). This was finally accomplished on March 24, 1964, after an interval of almost four months. Petitioners' new motion to dismiss showed that Judge McGarraghy had ruled on all issues, including the contention in the "amendment" as to withdrawal from the District (R. 76, 78, 80, 84). The argument before Judge Pine on March 23, 1964 established that Judge McGarraghy had heard and adjudicated all the issues, including the "withdrawal" contention (R. 78, 80-84, 90-91, 94, 103). Indeed, respondent's counsel twice conceded that he "did argue that fully":

> "THE COURT: Now, he asserts that you argued that fully and briefed that fully before Judge McGarraghy. He has read sections of the transcript. Now, is that true or not?

MR. BECKER: Your Honor, it is true that I did argue that fully . . ."

* * * *

"THE COURT: You have not answered my question yet. Did you not argue that fully before Judge McGarraghy?

MR. BECKER: I said, Your Honor, I did argue the matter before—" (R. 91, 94)

Judge Pine found that the filing of the purported amendment was an attempt to obtain a rehearing before another judge on what Judge McGarraghy had heard and decided, and ruled that respondent should have sought to appeal if it wished a review of Judge McGarraghy's decision (R. 92, 103). Judge Pine's order of March 24, 1964, dismissing the action, expressly found

> "that all relevant issues were raised and argued by counsel before Judge Joseph C. McGarraghy of this Court on November 27, 1963 and that Judge McGarraghy granted the joint motion of defendants to dismiss for failure to state a claim, and that the Second Amended Complaint presents no issues not decided by Judge McGarraghy" (App. B)

Respondent did not ask Judge Pine to make a Rule 54(b) determination, and the order does not contain such a determination. The Court of Appeals was briefed on the absence of such determination (R. 125).

The Court of Appeals held that respondent was not required to appeal from Judge McGarraghy's order, in order to protect its rights, because the "withdrawal" contention had not been placed before Judge McGarraghy "on the pleadings" (App. A, p. 6). The court had the mistaken impression that "the consequences of

the fact of withdrawal" had not been "put into contention" before Judge McGarraghy (*id.*, p. 7; cf. R. 48). The court concluded that Judge Pine "erred in ruling that all 'relevant issues' had been raised and disposed of by the December 3, 1963 order." The court asserted that Judge Pine's order was "final and appealable" and maintained this position even though the critical absence of a Rule 54(b) determination was brought to its attention (*id.*, p. 8; R. 125).

The court held, correctly, that the statute barring corporations from pleading statutes against usury applied to respondent despite its withdrawal from the District of Columbia (*id.*, pp. 10-11).

Finally, the court held that the so-call "Loan Shark Law", D.C. Code §§ 26-201 *et seq.* (engaging in the business of lending money at more than six per cent without a license) is not within "statutes against usury" because it is "a licensing statute." The court rejected petitioners' contention that small loan laws such as the Loan Shark Law have been uniformly treated as specialized usury statutes, and that Congress therefore intended "statutes against usury" to embrace the Loan Shark Law (*id.*, pp. 12-13; R. 127-131).

REASONS FOR GRANTING THE WRIT

1. The Holding That Judge Pine's Order of March 24, 1964 Was Appealable Although It Lacked a Rule 54(b) Determination Conflicts With Decisions of This Court, Especially Sears, Roebuck & Co. v. Mackey

Judge Pine's order of March 24, 1964 disposed of respondent's claim, but left outstanding a number of counterclaims and cross-claims (R. 26, 32; docket entries in District Court dated April 11, May 1, May 4, October 11 and October 28, 1963). The court below

was of course aware that the action involved multiple claims (App. A, p. 3). As petitioners pointed out below, Judge Pine did not make the "determination and direction" provided for in Rule 54(b). The Rule expressly declares (Appendix D) that in the absence of such "determination and direction," an order such as that of Judge Pine "shall not terminate the action as to any of the claims or parties, and the order . . . is subject to revision at any time. . . .

The decision below that Judge Pine's order was "final and appealable" is in square conflict with *Sears, Roebuck & Co.* v. *Mackey,* 351 U.S. 427, 435-438 (1956) and also with *Dickinson* v. *Petroleum Conversion Corporation,* 338 U.S. 507, 511, 512 (1950). This Court held in *Sears, Roebuck*:

> "To meet the demonstrated need for flexibility, the District Court is used as a 'dispatcher.' It is permitted to determine, in the first instance, the appropriate *time when each 'final decision'* upon 'one or more but less than all' of the claims in a multiple claims action is ready for appeal." [1] [Emphasis in original] 351 U.S. at 435.

This Court in *Sears, Roebuck* emphasized that the purpose of Rule 54(b) is to afford certainty as to appealability in multiple claims litigation:

> "This arrangement already has lent welcome certainty to the appellate procedure. Its 'negative

[1] In accord with *Sears Roebuck* the courts of appeals including the court below have uniformly held that in a Rule 54(b) situation the prescribed determination is a prerequisite to appealability. See *Courembis* v. *Independence Avenue Drug Fair, Inc.,* 115 U.S. App. D.C. 7, 316 F. 2d 658 (1963); *Walter W. Johnson Company* v. *R.F.C.,* 223 F. 2d 101 (9th Cir. 1955); *Bush* v. *United Benefit Fire Ins. Co.,* 311 F. 2d 893 (5th Cir. 1963).

> effect' has met with uniform approval. The effect so referred to is the rule's specific requirement that for 'one or more but less than all' multiple claims to become appealable, the District Court must make both 'an express determination that there is no just reason for delay' and 'an express direction for the entry of judgment.' A party adversely affected by a final decision thus knows that his time for appeal will *not* run against him until this certification has been made." [Emphasis in original] *id.*

The decision below defeats that purpose.

In support of its holding that Judge Pine's order was "final and appealable" the court cited *Marotta* v. *Milestone,* 114 U.S. App. D.C. 237, 314 F. 2d 242 (1963) (App. A, footnote 14). There the Court properly held that Rule 54(b) did not apply, because the outstanding claims of other parties had been disposed of shortly after the filing of the notice of appeal. But the opinion in *Marotta* also stated:

> ". . . [T]he order of the District Court now before us could not, because of the nature of the other claims, have been on their account 'subject to revision at any time before the entry of judgment adjudicating all the claims . . .' . . . ."

The decision below will be taken to mean that, notwithstanding *Sears, Roebuck,* a Court of Appeals may, if it chooses, dispense with the requirement of a Rule 54(b) determination. Or, because of the citation of *Marotta* v. *Milestone* containing the language quoted above, the decision below will be taken to hold that a Court of Appeals may dispense with the Rule 54(b) requirement if the District Court order "could not, because of the nature of the other claims, have been on

their account 'subject to revision. . . .' . . . ." The decision destroys the certainty as to appealability which Rule 54(b) was designed to afford. *Sears, Roebuck & Co.* v. *Mackey, supra.* Parties will be tempted to appeal in situations covered by Rule 54(b) without requesting the prescribed determination.

2. In Holding That a Sham "Amendment"—a Carbon Copy of the Dismissed Pleading—Rendered the Dismissal Order Unappealable, the Court of Appeals Ruling Is Inconsistent With Decisions of This Court, and of Other Courts of Appeal

Rule 73(a) precludes the use of appeals for delay by requiring timely notice of appeal "when an appeal is permitted by law . . ." The Rule carefully specifies that only certain timely motions will terminate the running of the time for appeal. The entry of an appealable judgment starts the time running. Rules 73(a) and 58 (See Appendix D).

> ". . . [T]he time for appeal begins to run from the entry of judgment." *Moore's Federal Practice* (2d ed.) § 58.05 [2]

The decision below will permit widespread evasion of these regulations. It enables a party, in those frequent cases where a pleading is dismissed with leave to amend, to file, instead of a notice of appeal, an "amended complaint" which is a carbon copy of the dismissed pleading, and then to relitigate the issue before another judge, with a new right to appeal if and when the "amended" pleading is held insufficient. This does violence to the appeal Rules heretofore enforced by this Court and by the Courts of Appeal, including the court below. See *Foman* v. *Davis,* 371 U.S. 178 (1962); *Randolph* v. *Randolph,* 91 U.S. App. D.C. 170,

171-172, 198 F. 2d 956, 957 (1952) (motion to vacate order did not terminate running of time for appeal); *Scholl* v. *District of Columbia,* 118 U.S. App. D.C. 98, 331 F. 2d 1018 (1964) ("Absent a timely appeal from the District Court's final order [containing a Rule 54 (b) determination] we are without jurisdiction . . ."). In *Foman* v. *Davis, supra,* this Court made clear that leave to amend should be denied for "undue delay, bad faith or dilatory motive on the part of the movant . . ." 371 U.S. at 182. Surely Judge McGarraghy would have denied leave to amend, if respondent had stated that it intended to file as an "amendment" the same pleading which Judge McGarraghy had just held insufficient. Leave to amend is properly denied where a tendered amendment would not cure the defects. *Byrne* v. *Kysar,* 347 F. 2d 734 (7th Cir. 1965); *Kinsley* v. *Markovic,* 333 F. 2d 684 (4th Cir. 1964) ("Allowance of the amendment could have served no useful purpose whatever".)

Judge McGarraghy's order of December 3, 1963 as modified by the order of December 19 was appealable. These orders gave respondent an election to amend by January 2 if new facts could be alleged to cure the defects in the dismissed pleading, or, if respondent did not amend by January 2, to file notice of appeal within the 30-day period. The effect of the orders was that, unless an amendment was filed by January 2, the amended complaint stood dismissed on that date. Inclusion in the December 19 order of the Rule 54(b) determination underscored the court's determination that, unless an amendment was filed by January 2, the complaint would stand dismissed and the time for appeal would start to run. The unequivocal fixing of January 2 as the date for dismissal of the complaint

distinguishes this case from *Jung* v. *K. & D. Mining Co., Inc.*, 356 U.S. 335 (1958) where the order left "confusion or misunderstanding" and did not "fix an unequivocal terminal date for appealability."

Moreover, respondent affirmatively elected to stand on the dismissed pleading by refiling it. A party whose pleading is ordered dismissed with leave to amend may by his conduct elect to stand on the pleading. Thus, the filing of a notice of appeal operates as an election, and the order is appealable, even though it contains leave to amend. *United States* v. *The Three Friends*, 166 U.S. 1, 49 (1897); *Due* v. *Tallahassee Theatres, Inc.*, 333 F. 2d 630, 633 (5th Cir. 1964); see *Cleary Bros.* v. *Christie Scow Corp.*, 176 F. 2d 370 (2nd Cir. 1949). Here, respondent expressed its election by refiling the same pleading which had been dismissed.[2]

The decision below is inconsistent with the principles of *Foman* v. *Davis*, *Byrnes* v. *Kysar* and *Kinsley* v. *Markovic*, *supra*. It enables a party, who has obtained leave to amend, to file a sham "amendment" and thereby gain rehearing before another judge and substantial delay in the running of time for appeal. In effect, the Court of Appeals has placed its stamp of approval on an act of bad faith toward a District Judge and on a cynical evasion of the Rules governing appeals.

---

[2] Judge Pine found that the refiling of the pleading which Judge McGarraghy had ruled insufficient was actually a motion for rehearing. But such a motion (filed 30 days after the order) was untimely, and therefore could not terminate the running of the time for appeal.

3. The Court of Appeals Holding That Under the 1963 Amendment Corporations Barred From Pleading "Statutes Against Usury" Are Nevertheless Free to Plead the Loan Shark Law is of Importance to the Financial Community Not Only in the District of Columbia, But in Many States Where Similar Statutes Exist

The Court of Appeals correctly holds that the 1963 amendment barring corporations from pleading "statutes against usury" embraces general usury statutes (App. A, p. 11). However, it erroneously holds that the so-called Loan Shark Law, D.C. Code § 26-601 *et seq.*, does not come within "statutes against usury" (App. A, pp. 11-13).

The Loan Shark Law regulates the rate of interest. §§ 26-601, 26-605 (Appendix D).

When Congress acted in 1963, small loan acts such as the District of Columbia Loan Shark Law were uniformly regarded as specialized usury statutes, because they regulated the rate of interest. Gallert, et al., *Small Loan Legislation* (1932) 82, 147.

> "The loan shark evil is a modern, specialized aspect of the problem of usury." Hubachek, *Progress and Problems in Regulation of Consumer Credit,* 19 Law and Contemp. Prob. (1954) 4

When Congress spoke in 1963, it must have intended to include small loan acts such as the Loan Shark Law within "statutes against usury", since they were universally regarded as a kind of usury statute. See, generally, *"The Loan Shark Problem Today",* 19 Law and Contemp. Prob. No. 1 (Winter issue 1954). Indeed, the Court of Appeals below has explicitly recognized that the District of Columbia Loan Shark Law is such a specialized usury statute. *Orme* v. *Lendahand Co., Inc.,* 76 U.S. App. D.C. 49, 52, 53, 54, 128 F. 2d 756,

759, 760, 761 (1942). There, the Court speaking through Judge (later Justice) Rutledge, stated that the Maryland Small Loan Act had a "'policy . . . against usury" and that the statutory penalty was "a preventive against usurious interest". Judge Rutledge expressly noted that a "similar statute" was in force in the District of Columbia, i.e., the Loan Shark Law. 76 U.S. App. D.C. at 51, 128 F. 2d at 758.

The decision below distorts the obvious meaning of the statute and comes as a shock to the financial community. As the opinion notes, ever since 1954 the statute has contained language indicating that a corporation may not plead usury, and indeed the Court of Appeals holds that the 1963 amendment "simply clarified the applicable law . . ." (App. A, pp. 10, 11). Since 1954 and especially since the 1963 amendment lenders have relied on the obvious meaning, i.e., that corporations are barred from pleading the Loan Shark Law as well as general usury statutes. The decision suddenly exposes lenders to the risk of forfeiting principal as well as interest, and gives an unjust windfall to corporate borrowers.[3] The result is largely to repeal the 1963 amendment.

Moreover, the decision is bound to affect the interpretation of similar legislation in many of the states. The Congressional policy barring corporations from pleading usury statutes is a policy prevailing in 19 states. *Comment,* 23 Md. L. Rev. (1963) 51, 54; see Curran, *Trends in Consumer Credit Legislation* (1965) 19, n. 53. The District of Columbia Loan

[3] The Court of Appeals below has held that if a loan is made in violation of the Loan Shark Law, the lender loses principal as well as interest. *Hartman* v. *Lubar,* 77 U.S. App. D.C. 95, 133 F. 2d 44 (1942).

Shark Law is a small loan act of a kind enacted in some 36 states. Hubachek, *The Drift Toward a Consumer Credit Code,* 16 U. Chi. L. Rev. (1949) 609, 617, 618. Thus the decision is bound to exert a widespread influence in the interpretation of the many state statutes.

A decision which has such widespread repercussions outside the District of Columbia should be reviewed by this Court. See *Unemployment Compensation Commission* v. *Aragon,* 329 U.S. 143, 145, n. 2 (1949).

Respectfully submitted,

J. H. KRUG
839-17th Street, N. W.
Washington, D. C. 20006
Counsel for Petitioners, Ten Individual Defendants and Net Limited, Inc.

ALBERT PHILIPSON
Brawner Building
Washington, D. C. 20006
Counsel for Petitioner, Special Investments, Inc.

January, 1966